

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4106854/17**

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**Held in Glasgow on 5 March 2018**

**Employment Judge: Robert Gall**

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**Mr Douglas MacDonald**

**Claimant  
Represented by:  
Mr I Kennedy -  
Advocate**

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**Argyll And Bute Council**

**Respondents  
Represented by:  
Ms J Dunlop -  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Tribunal is that the application made by the claimant for postponement of this Preliminary Hearing is granted.

**ORDER**

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Within 7 days of today`s date the claimant is to set out firstly, whether he says that the claim was submitted on time and, if he does, the basis on which that is his position. Secondly, he is to set out the basis on which it is said, if the claim is either accepted as being late or is found by the Tribunal to have been presented late, that it was not reasonably practicable for the claim to have been presented within 3 months of dismissal.

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**E.T. Z4 (WR)**

**REASONS**

1. The circumstances involved in this application were in my view extremely unsatisfactory.  
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2. The application was made on the morning of the Preliminary Hearing (“PH”). There had been no intimation prior to that to the Tribunal of any application for postponement although the claimant Mr MacDonald had tried to telephone the Tribunal on Friday 2 March 2018 when the Tribunal Office was closed due to weather conditions.  
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3. There is a solicitor for the claimant on record. I appreciate that funding is in question, however, that solicitor is on record. He submitted the claim. He did not make any application in writing for a postponement of this Hearing.  
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4. The claim was submitted on 30 November 2017. The postponement application arises as there has been no funding decision by the insurers. I am told that the insurers were approached when a previous legal matter was underway. No funding existed for that matter but Mr MacDonald was given some comfort regarding this potential matter being likely to be covered, albeit the claim had not been presented.  
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5. The claimant intimated the position in relation to the Tribunal claim to the insurers on 27 December 2017 and sought cover at that point, I was informed. That was one month after the claim was presented.  
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6. The insurers sought information from the claimant by corresponding with his solicitor on 9 January 2018. The solicitor replied in an email which I have not seen and which was not on the solicitor`s file in Tribunal. That reply was sent prior to 31 January 2018 and I am told involved a question being asked as to what documentation the insurers wished.  
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7. There was then no further contact from the claimant or his solicitor with the insurers until the middle of last week, on I was told 27, 28 February and 2 March 2018.
- 5 8. In the interim a 4 day Hearing had been fixed to commence on 17 April 2018. Notice of that was sent to parties, in the claimant`s case to his solicitor, on 29 January 2018. There was other correspondence then regarding the case involving the claimant`s solicitor. A PH on timebar was set down for today after that correspondence. Notice of the PH was sent on  
10 17 February 2018. Despite that history there was no chasing of the insurers until last week.
9. At time of the PH the insurers had not made a decision on insurance cover. However, I was informed that it was likely that this would happen within a  
15 week or two weeks. The respondents have been caused costs in relation to the PH today.
10. I did consider refusing the application for postponement and came very close to so doing. My concern related to the delay in intimating the claim to  
20 the insurers and in establishing the position with the insurers when it was known that this PH was set to proceed. I kept in mind that there was a Hearing scheduled to take place on 17 April 2018 and that a PH in relation to timebar required to be fixed for a time to allow the decision on that matter to be known. That would avoid witnesses being organised and preparation  
25 being undertaken if the case was not to proceed or, on the other hand, would ensure that there was time for preparation of the case if it was to proceed.
11. On balance I came to the view that the application would be granted. A  
30 fresh PH is therefore set down for 10am on 21 March 2018. It will be set down for 3 hours.

**IMPORTANT INFORMATION ABOUT ORDERS**

1. You may make an application under Rule 29 for this Order to be varied,  
5 suspended or set aside. Your application should set out the reason why you  
say that the Order should be varied, suspended or set aside. **You must  
confirm when making the application that you have copied it to the other  
party(ies) and notified them that they should provide the Tribunal with  
any objections to the application as soon as possible.**

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2. If this order is not complied with, the Tribunal may make an Order under Rule  
76(2) for expenses or preparation time against the party in default.

3. If this order is not complied with, the Tribunal may strike out the whole or part  
15 of the claim or response under Rule 37.

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**Employment Judge: Robert Gall**  
**Date of Judgment: 06 March 2018**  
25 **Entered in register: 06 March 2018**  
**and copied to parties**

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